

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PLAINS MARKETING CANADA, L.P.,

Plaintiff,

v.

Case No: 04-10310
Honorable David M. Lawson

RICHARD A. BETRON, JR., d/b/a
GENE'S HARDWARE AND LP GAS,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING PLAINTIFF'S MOTION TO COMPEL
DISCOVERY, DETERMINING LIABILITY, AND REFERRING MATTER TO
MAGISTRATE JUDGE FOR A HEARING ON DAMAGES**

Presently before the Court is the report issued on November 22, 2005 by Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1, recommending that this Court grant the plaintiff's motion to compel discovery, determine all issues relating to liability in the plaintiff's favor, and proceed to a hearing on damages. On August 4, 2005, the plaintiff filed a motion to compel discovery, which also sought dismissal of the case based on allegations of repeated discovery violations. The magistrate judge granted in part and denied in part that motion in an order dated October 11, 2005, but warned if the defendant failed to respond to discovery requests by November 11, 2005, he would consider recommending dismissal of the action to this Court. The defendant did not respond to the magistrate judge's order or discovery requests and the instant report and recommendation followed.

Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The defendant's failure to file objections to the report and

recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt # 31] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's motion to compel discovery [dkt # 27] is **GRANTED**.

It is further **ORDERED** that all issues of liability are resolved in the plaintiff's favor.

It is further **ORDERED** that the matter is referred to the magistrate judge to conduct a hearing on damages.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: December 21, 2005

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 21, 2005.

s/Tracy A. Jacobs
TRACY A. JACOBS